

In re Patent Application of
Lewis et al.

Serial No. 09/812,704

REMARKS

Informal Matters

Applicants thank the Examiners for the courtesies extended to Applicants' representative during the recent telephone interview with the Examiners on August 27, 2003 and for the acknowledgment that the Declaration of Charles C. Lewis and Terrance Moore has been considered and entered of record. Applicants make the amendments submitted herewith in supplement to the previous amendments and, likewise, without prejudice as to patentability, including the doctrine of equivalents, issues.

Claims Have Utility and Meet Requirements of 35 U.S.C. §101

Claims 1, 5-13, 17-25, 35 and 36 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. As discussed during the Examiner interview, this rejection is respectfully traversed by the inclusion of the language "in a tangible computer medium" which is understood to be software and/or hardware. Applicants have amended independent Claims 1, 13 and 25 to each include gathering data in a tangible computer medium, identifying from the tangible computer medium a physician at a greater risk, and modifying management behavior for the purpose of increasing profitability. These data-gathering and physician-identifying steps and the purpose behind the modifying behavior step does indicate application, involvement, usage or advancement of the technological arts. Thus, Claims 1, 13 and 25 as amended are directed to statutory subject matters. Claims 5-12 being dependent of Claim 1, Claims 17-24 being dependent of Claim 13, and Claims 35-36 being dependent of Claim 25 are also directed to statutory subject matters upon the amendments to Claims 1, 13 and 25. Clearly these method steps are directed to methods of doing business in the healthcare fields, and clearly, the claimed invention, as a whole, is within the technological arts. Accordingly, as agreed by the Examiners during the interview, Applicants respectfully request that the rejection of Claims 1, 5-13, 17-25, 35 and 36 under 35 U.S.C. §101 be withdrawn.

In re Patent Application of
Lewis et al.

Serial No. 09/812,704

Claims 26-34 Are Definite and Meet The Requirements Of 35 U.S.C. §112

Claims 26-34 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. This rejection is respectfully traversed. Applicants previously amended independent Claim 26 to address the concern related to sufficient antecedent basis for the limitation of "the ancillary medical networks" for Claims 26-34, dependent of Claim 25. Therefore, Claims 26-34 are definite. Accordingly, also as agreed during the interview, Applicants respectfully request that the rejection of Claims 26-34 under 35 U.S.C. §112, second paragraph, be withdrawn.

Claims Define Over Freeman And Are Novel

Claims 25-27, 35-37, and 46-49 were rejected under 35 U.S.C. §102 as being anticipated by Freeman, Jr. et al. (U.S. Pat. No. 6,012,035, hereafter Freeman). This rejection also is respectfully traversed. As discussed during the interview, Freeman describes a system and method for supporting delivery of health care. Specifically, Freeman describes a data switch and repository that records all of the transactions among the provider, insurance company and financial institution (see Col. 2, lines 50-55), and a method of utilizing such data switch and repository to support an agency-cooperative health care provision and management (see Col. 2, lines 8-26). Freeman fails to teach or suggest a method of optimizing the profitability of an insurance network having a plurality of physicians in a healthcare practice participating therein by managing medical costs. The system and method described in Freeman is directed to the purpose of effectuating the operation of a cooperative agency organization dedicated to health care provision amongst a plurality of entities rather than optimizing the profitability of an insurance network. In contrast, the present invention teaches a method of optimizing a health care insurance network and related systems. Such method and systems are focused on managing medical costs of participating physicians. Applicants respectfully submit that Freeman describes a completely different system and method from what is claimed in the present invention. In fact, Freeman fails to teach each and every element of the present invention. For example, Freeman describes different entities that are included in the health care delivery system and a data switch and repository interfaces among these entities to support the delivery (Col. 3, lines 10-15). Freeman further describes that the transactions taking place amongst different entities are monitored by management services to ensure the requirements set by the cooperative are met

In re Patent Application of
Lewis et al.

Serial No. 09/812,704

(Col. 9, lines 16-19), and that the overall cooperative is based upon a membership with mutual agreements to the cooperative business relationship (Col. 7, lines 38-52). Freeman fails to teach or suggest a method of optimizing the profitability of an insurance network, let alone gathering data or information regarding ancillary medical cost, identifying physicians that are at a greater risk of not receiving a reimbursement amount such as physicians that are potentially unprofitable, and modifying the participating physicians' management behavior regarding the ancillary medical costs that are not profitable for the insurance network. As acknowledged during the interview, at least the step of identifying is not found in Freeman, and Applicants submit that the other steps are absent as well. Accordingly, Claims 25-27, 35-37, and 46-49 are novel and define over Freeman.

Claims Are Not Obvious And Define Over Freeman and Segal

Claims 1, 2, 5-14, 17-23, 24, 38 and 50 stand rejected under 35 U.S.C. §103 as being unpatentable over Freeman in view of Segal. This rejection likewise is respectfully traversed. Applicants believe that the Examiner's rejection is improper for at least three reasons. First, each of Freeman and Segal fails to disclose or suggest what the Examiner alleges it discloses. Instead, Applicants believe that the Examiner has improperly taken elements from each of Freeman and Segal out of context. Second, because there is no evidence of motivation to combine these documents, Applicants believe that the Examiner has used improper hindsight by using Applicants' patent application disclosure as a road map to then piecemeal elements from these Freeman and Segal documents together in an attempt to reject the claims. Third, Applicants also believe that even if these documents were somehow combinable, the result of the combination would not be the claimed invention. In detail, Applicants wish to present the following remarks.

Freeman describes a system and method for supporting delivery of health care. Specifically, Freeman describes a data switch and repository that records all of the transactions among the provider, insurance company and financial institution (see Col. 2, lines 50-55), and a method of utilizing such data switch and repository to support an agency-cooperative health care provision and management (see Col. 2, lines 8-26). Freeman fails to teach or suggest a method of managing a healthcare practice participating in an insurance network to optimize the profitability of the healthcare practice with respect to a predetermined reimbursement amount for

In re Patent Application of
Lewis et al.

Serial No. 09/812,704

pharmacy costs or selected ancillary medical costs. Nor does Freeman teach or suggest a healthcare management optimizing system. The system and method described in Freeman is directed to the purpose of effectuating the operation of a cooperative agency organization dedicated to health care provision and management amongst a plurality of entities (see Col. 3, lines 7-16) rather than optimizing the profitability of the healthcare practice.

Segal describes drug prescribing and drug use process in a pharmaceutical care system. Segal fails to teach anything regarding a method of managing a healthcare practice participating in an insurance network to optimize the profitability of the healthcare practice with respect to a predetermined reimbursement amount for pharmacy costs or selected ancillary medical costs. Nor does Segal teach or suggest a healthcare management optimizing system.

In contrast, the present invention teaches a method of managing a healthcare practice to optimize profitability of the healthcare practice and related systems. Such method and systems are focused on identifying physicians that are at a greater risk of not receiving a predetermined reimbursement amount or as not being potentially profitable and modifying participating physicians' management behavior regarding the pharmacy costs or ancillary medical costs to reduce the risk of not receiving the predetermined reimbursement amount from the insurance network and thereby increase profitability of the healthcare practice.

In view of the above remarks, and the acknowledgement during the interview that Freeman at least did not include the identifying step, Applicants believe that the combination of Freeman in view of Segal neither rises to the level of a proper prima facie 35 U.S.C. §103 rejection nor renders obvious Claims 1, 2, 5-14, 17-23, 24, 38 and 50. One skilled artisan would not have produced the present invention based on the teachings or suggestions of Freeman and Segal, alone or combined. Therefore, Applicants respectfully request that the rejection of Claims 1, 2, 5-14, 17-23, 24, 38 and 50 under 35 U.S.C. §103 be withdrawn.

Claims 28-29 Are Not Obvious As Well

Claims 28 and 29 stand rejected under 35 U.S.C. §103 as being unpatentable over Freeman in view of Glass. This rejection is respectfully traversed. Applicants believe that the Examiner's rejection is improper for at least three reasons. First, each of Freeman and Glass fails

In re Patent Application of
Lewis et al.

Serial No. 09/812,704

to disclose or suggest what the Examiner alleges it discloses. Instead, Applicants believe that the Examiner has improperly taken elements from each of Freeman and Glass out of context. Second, because there is no evidence of motivation to combine these documents, Applicants believe that the Examiner has used improper hindsight by using Applicants' patent application disclosure as a road map to then piecemeal elements from these Freeman and Glass documents together in an attempt to reject the claims. Third, Applicants also believe that even if these documents were somehow combinable, the result of the combination would not be the claimed invention. In detail, Applicants wish to present the following remarks.

Freeman describes a system and method for supporting delivery of health care. Specifically, Freeman describes a data switch and repository that records all of the transactions among the provider, insurance company and financial institution (see Col. 2, lines 50-55), and a method of utilizing such data switch and repository to support an agency-cooperative health care provision and management (see Col. 2, lines 8-26). Freeman fails to teach or suggest a method of optimizing the profitability of an insurance network having a plurality of physicians in a healthcare practice participating therein by managing medical costs. The system and method described in Freeman is directed to the purpose of effectuating the operation of a cooperative agency organization dedicated to health care provision and management amongst a plurality of entities (see Col. 3, lines 7-16) rather than optimizing the profitability of an insurance network.

In contrast, the present invention teaches a method of optimizing a health care insurance network as stated in Claim 25. Such method is focused on managing medical costs of participating physicians. In view of this, Freeman fails to teach the method of Claim 25. Claim 27 is dependent of Claim 26, which is dependent of Claim 25. Therefore, Freeman fails to teach the method of Claim 27.

Glass describes incentive-based physician compensation models. Glass further describes that a physician can be rewarded for being cost-effective (paragraph 51). Glass indicates identifying a physician who has actual costs less than budgeted costs for a bonus reward. Glass, however, fails to teach identifying a physician who has ancillary medical costs greater than the average costs per physician for the healthcare practice. Furthermore, Glass fails to teach any method for optimizing a health care insurance network as claimed in the present invention.

In re Patent Application of
Lewis et al.

Serial No. 09/812,704

In view of the above remarks, and the acknowledgement during the Examiner interview that Freeman at least does not include the identifying step, Applicants believe that the combination of Freeman in view of Glass neither rises to the level of a proper prima facie 35 U.S.C. §103 rejection nor renders obvious Claims 28 and 29. One skilled artisan would not have produced the present invention based on the teachings or suggestions of Freeman and Glass, alone or combined. Therefore, Applicants respectfully request that the rejection of Claims 28 and 29 under 35 U.S.C. §103 be withdrawn.

Claims Are Not Obvious And Define Over Freeman, Segal, And Glass

Claims 3, 4, 15, 16, 30-34, 39-45 and 51-56 stand rejected under 35 U.S.C. §103 as being unpatentable over Freeman in view of Segal and further in view of Glass. This rejection is respectfully traversed. Applicants believe that the Examiner's rejection is improper for at least three reasons. First, each of Freeman, Segal and Glass fails to disclose or suggest what the Examiner alleges it discloses. Instead, Applicants believe that the Examiner has improperly taken elements from each of Freeman, Segal and Glass out of context. Second, because there is no motivation to combine these documents, Applicants believe that the Examiner has used improper hindsight by using Applicants' patent application disclosure as a road map to then piecemeal elements from these Freeman, Segal and Glass documents together in an attempt to reject the claims. Third, Applicants also believe that even if these documents were somehow combinable, the result of the combination would not be the claimed invention. In detail, Applicants wish to present the following remarks.

Freeman describes a system and method for supporting delivery of health care. Specifically, Freeman describes a data switch and repository that records all of the transactions among the provider, insurance company and financial institution (see Col. 2, lines 50-55), and a method of utilizing such data switch and repository to support an agency-cooperative health care provision and management (see Col. 2, lines 8-26). Freeman fails to teach or suggest a method of optimizing the profitability of an insurance network having a plurality of physicians in a healthcare practice participating therein by managing medical costs. The system and method described in Freeman is directed to the purpose of effectuating the operation of a cooperative

In re Patent Application of
Lewis et al.

Serial No. 09/812,704

agency organization dedicated to health care provision and management amongst a plurality of entities (see Col. 3, lines 7-16) rather than optimizing the profitability of an insurance network.

Segal describes drug prescribing and drug use process in a pharmaceutical care system. Segal fails to teach anything regarding a method of managing a healthcare practice participating in an insurance network to optimize the profitability of the healthcare practice with respect to a predetermined reimbursement amount for pharmacy costs or selected ancillary medical costs. Nor does Segal teach or suggest a healthcare management optimizing system.

Glass describes incentive-based physician compensation models. Glass further describes that a physician can be rewarded for being cost-effective (paragraph 51). Glass indicates identifying a physician who has actual costs less than budgeted costs for a bonus reward. Glass, however, fails to teach identifying a physician who has ancillary medical costs greater than the average costs per physician for the healthcare practice. Furthermore, Glass fails to teach any method for optimizing a health care insurance network as claimed in the present invention.

In contrast, the present invention teaches a method of managing a healthcare practice to optimize profitability of the healthcare practice and related systems. Such method and systems are focused on modifying participating physicians' management behavior regarding the pharmacy costs or ancillary medical costs to reduce the risk of not receiving the predetermined reimbursement amount from the insurance network.

In view of the above remarks, and the acknowledgement that Freeman at least does not include the identifying step, Applicants believe that the combination of Freeman in view of Segal and further in view of Glass neither rises to the level of a proper *prima facie* 35 U.S.C. §103 rejection nor renders obvious Claims 3, 4, 15, 16, 30-34, 39-45 and 51-56. One skilled artisan would not have produced the present invention based on the teachings or suggestions of Freeman, Segal and Glass, alone or combined. Therefore, Applicants respectfully request that the rejection of Claims 3, 4, 15, 16, 30-34, 39-45 and 51-56 under 35 U.S.C. §103 be withdrawn.

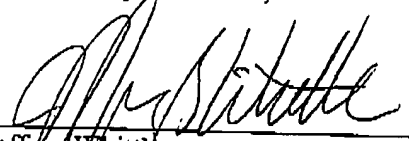
In re Patent Application of
Lewis et al.

Serial No. 09/812,704

CONCLUSION

In view of the amendments and remarks set forth herein, Applicants respectfully submit that the application is in condition for allowance. Accordingly, the issuance of a Notice of Allowance in due course is respectfully requested.

Respectfully submitted,



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